IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.607 OF 1995

The State of Maharashtra]..Appellant

Vs.

Prakash Shantaram Redkar]
r/o At post Aasali]
Tal.Vengurla, Dist. Sindhudurg]..Respondent

....

Mr.A.S.Shitole, A.P.P. for Appellant
Ms.Shama Ghotekar with Mr.S.B.Shetye Advocate for Respondent

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CORAM: SMT.V.K.TAHILRAMANI,J.

DATE : NOVEMBER 30,2004

ORAL JUDGMENT:

1. Through this appeal, the appellant State of Maharashtra challenges the judgment and order dated 29th July, 1995, passed by the learned Judicial Magistrate F.C. Vengurla in S.C.C.No. 10 of 1992. By the said judgment and order, the learned Magistrate acquitted the respondent i.e. original accused of the offence under Sections 304-A, 279, 427 of IPC and under Sections 184, 134(b) read with Section 177 of the Motor Vehicles Act, 1988.

2. Briefly stated the prosecution case is as under:

. On 25th December, 1991 at about 6.30 p.m. to 7 p.m. the deceased Shantaram Dipaji was returning to his house along with P.W.3 Vasant Mantri. At that time, the scooter came from back side and gave dash to Shantaram Dipaji. Shantaram Dipaji was injured. Complaint came to be filed. Shantaram Dipaji was taken to hospital, where he expired in the hospital after 3-4 days. After completion of investigation, the charge sheet came to be filed.

3. Plea of the accused came to be recorded. He pleaded not guilty and claimed to be tried. The prosecution examined five witnesses in support of its case. After going through the evidence adduced by the prosecution, the learned Magistrate acquitted the respondent-accused of all the offences. Hence, this appeal.

4. I have heard Shri.A.S.Shitole, the learned A.P.P. for the State and Mr.Sachin Shetye with Ms. Shama Ghotekar, learned advocate for the respondent and I have perused the entire record pertaining to the present case. After carefully considering the matter, I am of the opinion that this appeal deserves to be dismissed.

5. The most important witness in the present case is P.W.3 Vasant Mantri. At the relevant time, he and Dipaji were passing by the road and scooter of the accused came from backside and gave dash to Dipaji due to which Dipaji fell down. It is pertinent to note that eye witness P.W.3 Vasant Mantri has nowhere stated in his evidence that the scooter of the accused was in fast speed or that the accused drove the scooter rashly or negligently.

6. P.W.1 Avinash Narhari Walawalkar and P.W.2 Atmaram Ramkrishna Mantri are the panch witnesses in the present case. Both these witnesses have stated that there were blood stains on the scene of the accident. However, P.W.2 Atmaram Mantri has admitted that panchnama was drawn on 26.12.1991 i.e. on the next day. So also from panchnama, it is seen that it was drawn on the next day of the incident. There was heavy vehicular traffic on the road where the accident occurred. In such case, it appears rather doubtful as to how the blood stains were seen at the spot on the next day. The panchnama does mention the brake marks on the spot of accident, however, the evidence of the panch witness is silent on the aspect that there were brake marks at the scene of accident. Moreover, admittedly the road

where the accident took place, had heavy vehicular traffic. In such case, it would be rather doubtful as to how any blood stains and brake marks could be seen on the next day. Thus, it cannot be reliably said that the brake marks in question, were those caused by the scooter of the accused.

7. Besides the above facts, there are descripancies as far as drawing of the panchnama is concerned. According to panch witness P.W.1 Avinash Walawalkar, the place of the accident was shown by police. However, as per the panchnama, the place of accident was shown by P.W.3 Vasant Mantri. The other version which has come on record is that the accused had shown the place of accident. In such case this evidence is also not worthy of reliance.

8. The evidence of P.W.1 Avinash Walawalkar, P.W.2 Atmaram Mantri as well as P.W.3 Vasant Mantri and the other circumstantial evidence on record, does not reveal that the accused was driving the scooter in rash or negligent manner. Thus, in the present case, there is neither direct nor circumstantial evidence to conclude that the accused was driving his scooter in a rash and negligent manner. In such case, it cannot be said that the offence under Section 304-A of IPC stands proved.

9. As far as the offence under Section 427 is concerned, it was the scooter of the accused which was damaged. Some minor damage was caused to the scooter. In the present case, there is no evidence that the accused had any intention or knowledge to commit such mischief. From the evidence on record, it is clear that it was an accident.

10. The accused was also charged under Section 134(b) of the Motor Vehicle Act, which reads as under:

> . **134. Duty of driver in case of accident and injury to a person:**
>
> . (a).....
>
> . (b) give on demand by a police officer any information required by him, or, if no police officer is present, report the circumstances of the occurrence, including the circumstances, if any, for not taking reasonable steps to secure medical attention as required under clause (a), at the nearest police station as soon as possible, and in any case within twenty-four hours of the

occurence;"

11. According to P.W.3 Vasant Mantri the accused left the place saying that he would bring the vehicle but thereafter the accused did not return. However, it is pertinent to note the cross examination of Vasant Mantri wherein he has specifically stated that after the accident, the accused stopped on the spot for a long time. P.W.3 Vasant Mantri has stated that the accused was waiting for rickshaw to take the injured to the hospital. That one rickshaw was stopped by the accused but as there were passengers in the rickshaw, injured could not be taken in the said rickshaw. In view of these admissions of P.W.3 Vasant Mantri, it is clear that the accused had no intention to run away or that he was negligent to give any medical aid to the injured. Considering that accused was there on the spot for a long time and the efforts were made by the accused to make available the vehicle for taking the injured to the hospital, the possibility that accused went to bring rickshaw and meanwhile, P.W.3 Vasant Mantri went to inform the police out post Shirole, cannot be denied.

12. As stated earlier, the evidence on record does not show that the accused was driving the vehicle in rash and negligent manner. So also the evidence on record does not show that the accused was driving the vehicle in a dangerous manner. In such case, the conclusion of the learned Magistrate that the prosecution has not proved any of the offences against the accused, is proper. Thus, I do not see any merit in this appeal and the same is dismissed.

9. The judgment and order of acquittal passed by the learned Judicial Magistrate F.C. Vengurla, dated 29th July, 1995 in S.C.C.No. 10 of 1992 is confirmed. The appellant is on bail. His bail bonds shall stand cancelled.

[V.K.TAHILRAMANI.J]